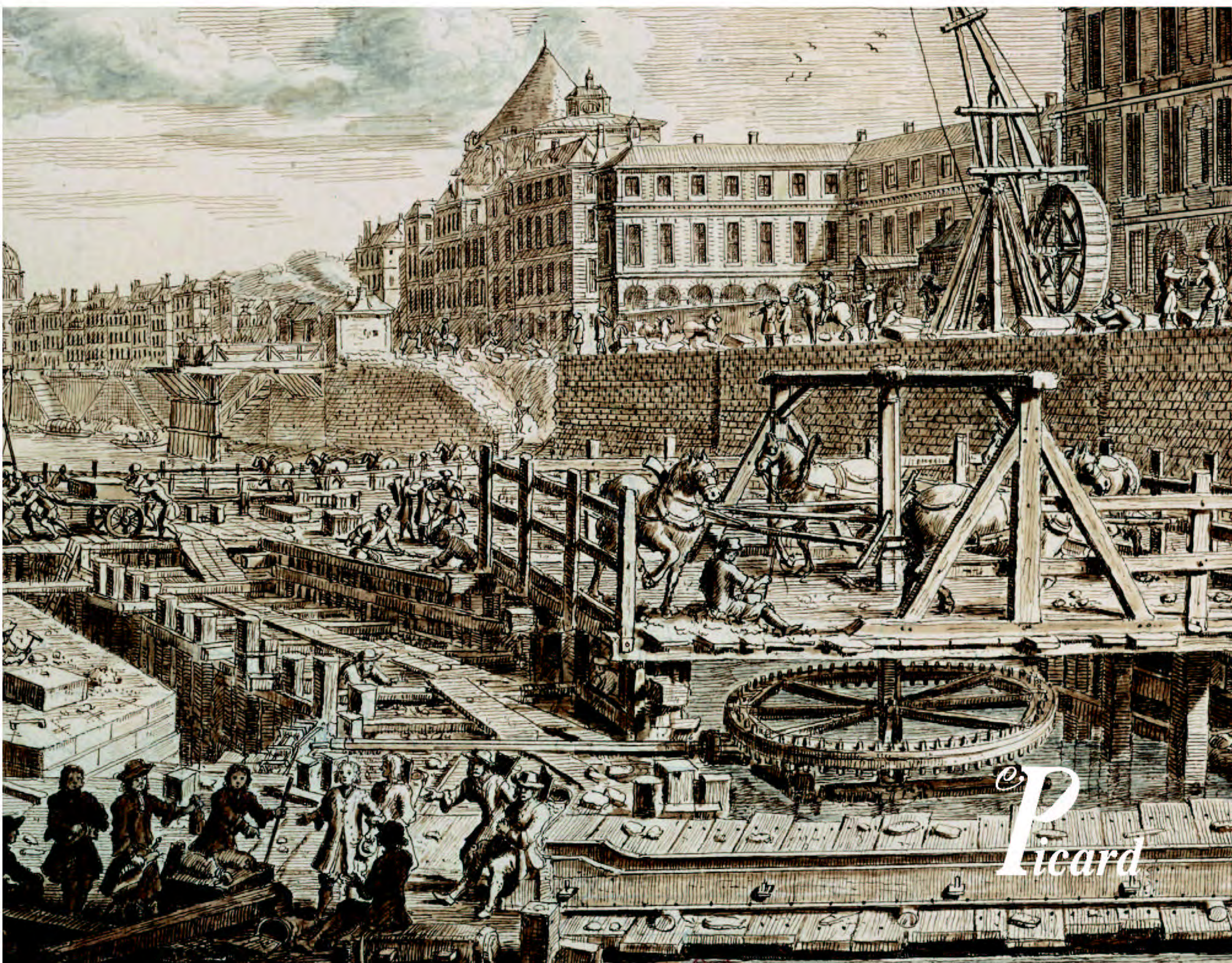


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# Building Expropriation Process for the Construction of the New Dock at the Port of Cartagena [Spain] in the 18th Century

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## Legal framework for expropriations during the 18th century

According to the preamble of the Law of Expropriation of 16 December 1954, currently in effect in Spain, “Eminent domain, or expropriation, refers to a situation in which, having determined the conflict between public and private interests, taking into consideration the prevailing logic of the former, the appropriate legal procedure must be determined in order to legally discharge the compulsory transfer of expropriated property and thereby make the corresponding equitable indemnification payable to the individual.” In Spain, the legislation on eminent domain originates from the Law of “Expropriation for the Public Interest” of 17 July 1836. This regulation is based, in turn, on Article 172 of the Constitution of 1812, concerning “restrictions on the King’s authority,” which states: “The King may not take ownership of any individual or corporation, nor interfere with its possession, use and enjoyment, and, in the event that it might become necessary to claim an individual’s property for the

purpose of the common interest, the aforementioned cannot be undertaken without simultaneously compensating the individual and providing him with a fair exchange in the eyes of the people.” Therefore, when the construction project in Cartagena was carried out in 1732, there was still no specific Spanish legislation on expropriation. However, while in other culturally comparable countries, such as France, the act of expropriation prior to the seventeenth century lacked any guarantees and therefore closely resembled confiscation, Spain already had a longstanding tradition of respecting an individual’s right to receive compensation for having his property taken away in the name of public interest.

According to Lopez-Nieto (2007, 68), “In our *Partidas*, or statutory codes, from the Middle Ages, we see a very direct precedent with regards to expropriation, conceived with very similar characteristics to that which holds in modern times” (Fig. 1). Additionally, this author notes that: “Said *Partida* established, in effect, that the King or Emperor had the authority to dispossess an owner, but only if the expropriation ‘was to become the common prop-



Fig. 1: Image from "Las siete partidas," 1555 copy of, glossed by Gregorio Lopez.

erty of the land or kingdom' and was exchanged for something of equal value or purchased from the owner for what it was worth (2<sup>a</sup> *Partida*, Title I, Law 2<sup>a</sup>, *Partida* 3<sup>a</sup>, Title XVIII, Law 31)." According to Lopez-Nieto, this had occurred previously in the *Partidas* of Alfonso X, the Wise, in which "an admirable synthesis of harmonization between the prince's authority, who by virtue of 'making the laws' was above them, and an owner's rights, which protected him from this by virtue of the Natural law that binds them together equally with regards to acquired rights" (ibid., 68-69). This medieval practice can therefore be credited with setting the precedent for the regulation that is considered the universal origin of the right of expropriation, which is contained in the Declaration of the Rights of Man and Citizen of 1789, one of the fundamental texts voted on by the National Constituent Assembly that was formed after the meeting of the Estates-General during the French Revolution: "Property, being an inviolable and sacred right, yields to public necessity, legally constituted and under the condition of a just and prior indemnity."

### The historical context of the expropriations and construction project for the Port of Cartagena

The arrival of the Bourbons to the Spanish throne in 1713 brought with it a series of large-scale reorganizations of the Spanish Navy, coinciding with each of the subsequent reigning monarchs (Merino 1981). The purpose of these changes was to develop the Spanish Navy so as to put it on par

with the fleets of other European countries, such as England, France and Russia. After the War of Succession and under the reign of Felipe V [1700-1746], a plan was undertaken to establish a "new Royal Navy" and José Patiño (Merino 1981, 18) was appointed Secretary of State of the Office of the Navy and the Indies.

The desire to build and maintain a fleet in accordance with the needs of a modern state led to a reexamination of the requirements that had been established for the construction of the base for the Fleet of Galleons in Cartagena. Prior to this time, the Port of Cartagena had been undergoing preparations to serve as the permanent base for the Spanish Galleons. However, this new objective resulted in the site being chosen for a more committed and ambitious project, as the base for the vessels of the Royal Armada, "resembling at all cost those of France, England and Russia" (Fernández Duro 1973, 215).

Merino (1981, 18) cites Olesa (1968) in speaking of the complex panorama of fleets and designations from previous centuries, where the few warships were arranged in fleets with diverse designations that represented their origins. In 1714, an effort was made to bring order to this organizational scheme through the publication of a royal decree on 14 February 1714, abolishing "the kingdoms' fleets and the use of their own names," and substituting them with that of the Royal Navy (Merino 1981, 18). Following this provision, the Armadas of Galleons and Barlovento were maintained for several years, before being eliminated in 1748 and 1749, respectively.

This reorganization had two tiers of consequences: national and local. On a national level, it meant that the administrative and operative organism of the Navy would be run from this moment on by a secretariat, which would serve as the decision-making body on maritime issues together with the King and the Minister in charge. At the local level, it meant that the Port of Cartagena would now have to adapt to the necessary new requirements as base for the new Navy with regards to capacity, water depth and the requisite infrastructures and defenses.

This plan for renovation and modernization culminated with the enactment of the Royal Decree for the creation of the Maritime Departments and,

consequently, their naval bases in the departmental capitals. The enactment date of this Royal Decree was likely to have been 5 December 1726 (Rubio and Piñera 1988, 59-61). It stipulated the division of the peninsular coast into the Northern, Southern and Eastern [Levante] Departments, with their respective capitals in Ferrol, Cádiz and Cartagena (Merino Navarro 1981, 25-28). Cartagena's new designation as the capital of the Maritime Department of Levante on 5 July 1728 (Pérez-Crespo 1992, 31), brought with it an increased level of exigency for its port, in addition to a new requirement for an

Arsenal to match those of Cádiz and Ferrol. At the time of its appointment as department capital, the situation in Cartagena's port was that of an obsolete harbor that was largely clogged by sediment from the rivers that flowed into its northwest corner (Fig. 2).

The first two projects proposed in 1728 for the construction of a naval base in Cartagena were the work of the engineers, Antonio Montaigú de la Perille (Fig. 3) and Alejandro de Rez (Fig. 4). The first raised the possibility of diverting the watercourses that were clogging the bay to the cove of Algameca Chica. To do so, it would be

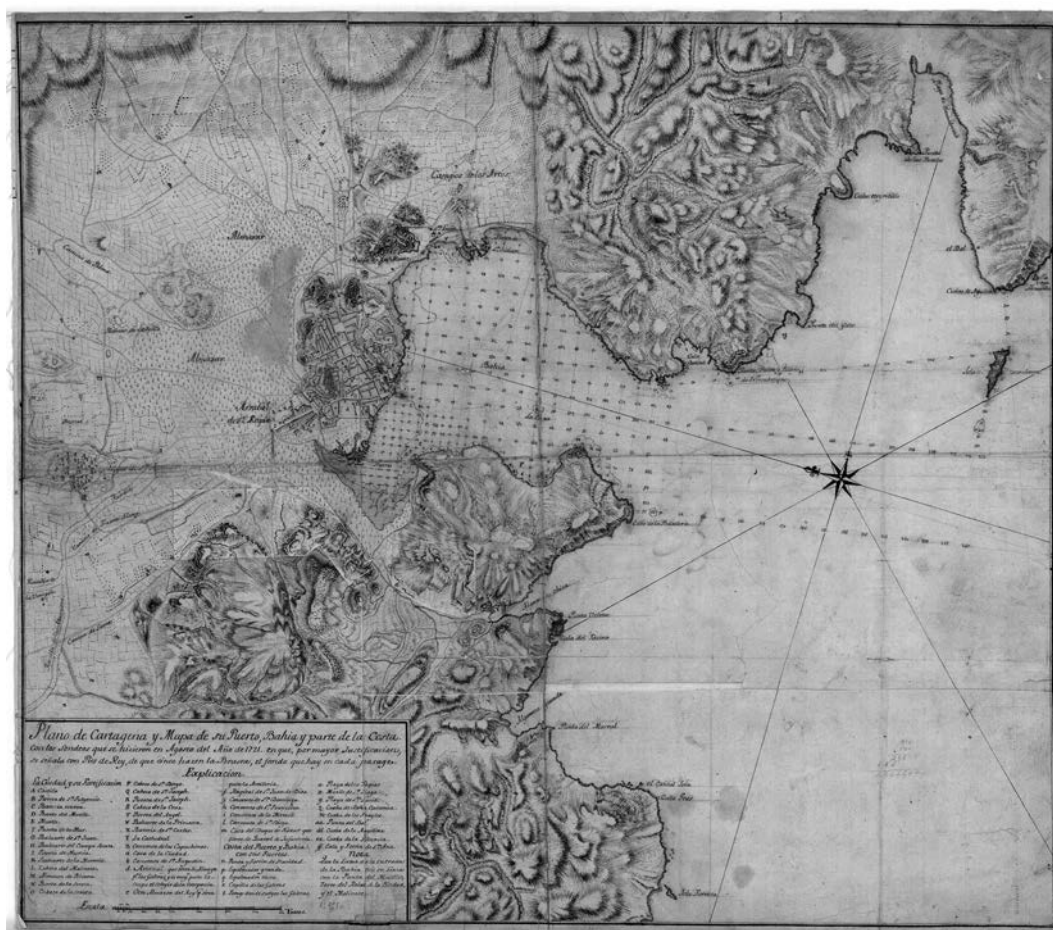


Fig. 2: Map of Cartagena and map of the port, bay and part of the coast with the soundings that were carried out in August, 1721, in which, for further justification, the depth of each spot is indicated in "king's ft", five of which comprise a brassa [an old system of measurement]. Anonymous [I.P. Verbom or F. Leon and Mafey]. Ministry of Defense Cartographic Archive and Geographical Studies of Geographic Centre of the Army.



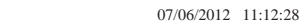
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Fig. 4: Map of project for the port of Cartagena with the arsenal and corresponding warehouses that make up the complete marina 30/11/1728. A. Rez A.G.M.M., sign. 965-2 Ministry of Defence, Institute of Military History and Culture.

necessary to expropriate several buildings in the city's northern district of San Roque. The second avoided this issue, not considering it a priority for the construction of the city's Arsenal. Ultimately, a revised version of Rez's project was approved a few years later, on 2 May 1731. This draft incorporated the necessary channel for diverting the mouths of the watercourses away from the artificial dock that was to be built (Fig. 5).

This last proposal avoids the occupation of land in the city's San Roque district, proposed years before by Montaigú, through a new layout of the channel of the avenues.

Upon the death of Alejandro de Rez on 5 May 1732, Antonio Montaigú de Perille took over management of the project for a brief period. He not only oversaw construction, but also amended the work of his predecessor concerning the channels of the avenues and the border between the arsenal and the city, returning to his earlier pretensions. During these years, Feringán temporarily assumed management of the work in

Cartagena, as Montaigú was based in Valencia as the Director of Engineering at the Military Command Headquarters. While acting as a subordinate of Montaigú and at the request of Patiño, Feringán made plans for the diversion of storm-water runoff channels to avoid their drainage into the Mandarache, in contrast with the proposals made by Rez and Montaigú. In view of this, the plans had to be submitted to the King for approval (Fig. 6). This constituted one of the most fundamental actions carried out on its infrastructure, making construction of Cartagena's naval base and arsenal possible – not to mention the fact that in 1732 and 1733, this task occupied a large part of the workforce and monetary resources.

This was the context in which reports were prepared regarding expropriation costs for the houses that would be affected by carrying out the projects addressed in this research. In the end, however, none of these proposals would reach fruition in the departmental city. Instead, the final choice as to the definite project to be built

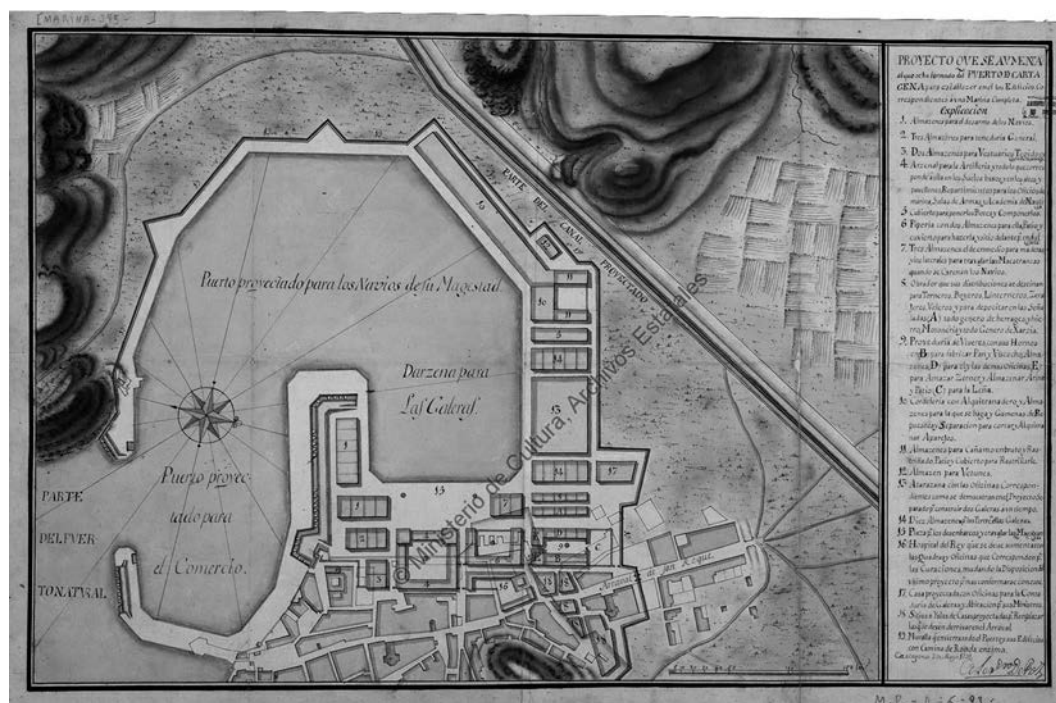


Fig. 5: Project adding to that which had formed the port of Cartagena, in order to establish a complete marina in the corresponding. 02/05/1731. A. Rez A.G.S., mpd 06, 093 (Marina, Leg. 375) Ministry of Culture, General Archive of Simancas.

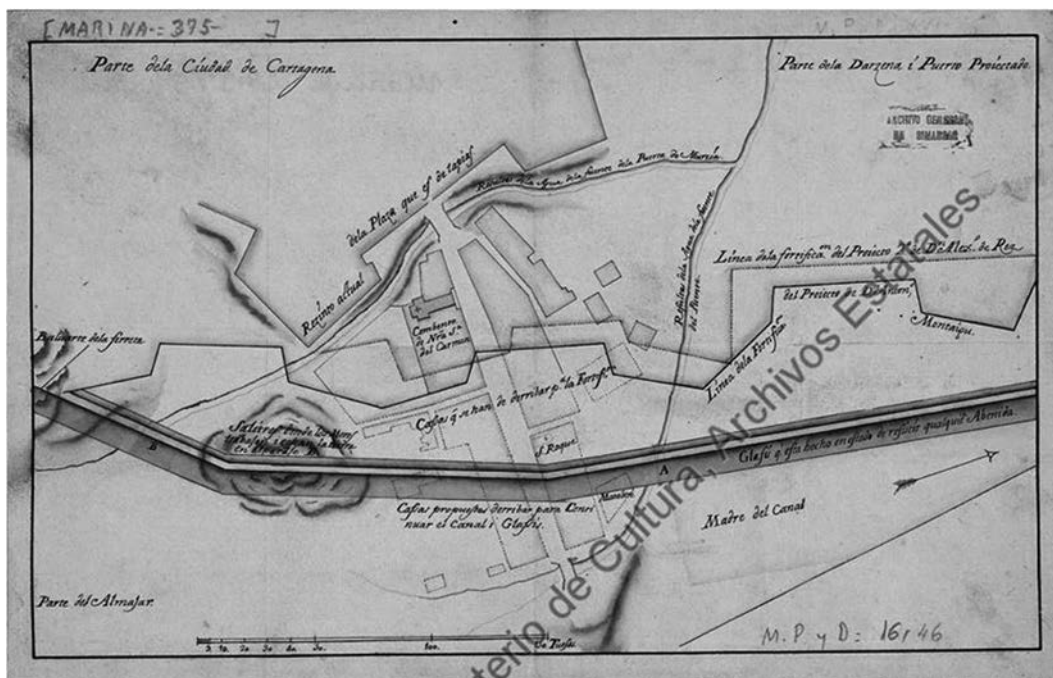


Fig. 6: Map of part of the city of Cartagena indicating Antonio Montaigú's project and Alejandro de Rez's second project concerning its fortification. aprox. 09/1733. S. Feringán. A.G.S., mpd 16, 046 (Marina, Leg. 375) Ministry of Education, Culture and Sports, General Archive of Simancas.

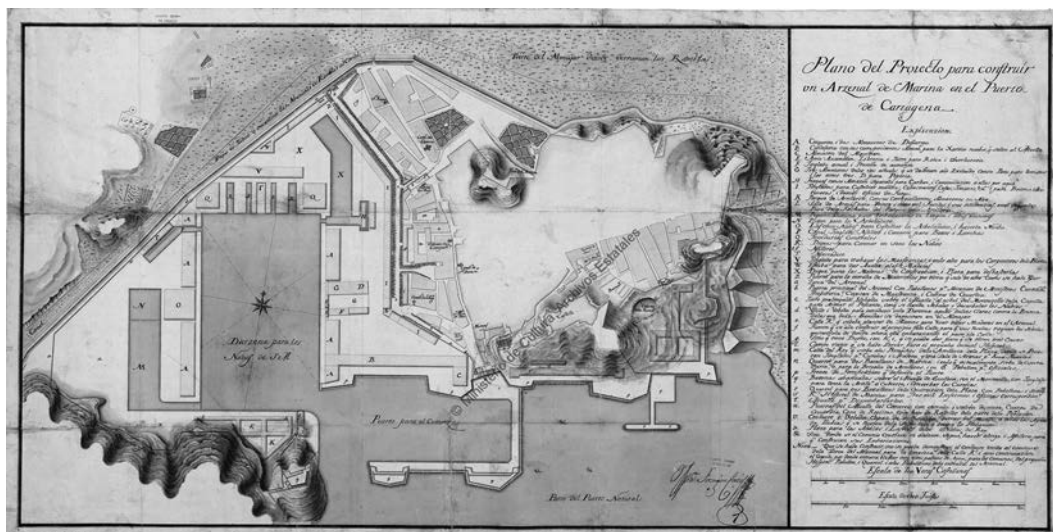


Fig. 7: Map of the project to build a naval arsenal in the port of Cartagena s.f. [approx. 06/04/1751]. Feringán A.G.S., mpd 21, 011 (Marina, Leg 376.) Ministry of Education, Culture and Sports, General Archive of Simancas.



in Cartagena was based on scrupulous adherence to the statement made by Jorge Juan y Santacilia, giving priority to the project's economic impact<sup>1</sup>: [...] the current undertaking is reduced, as the King has formed a Naval Office in Cartaxena, to such that in effect it is, and will only cost his Majesty the correct and reasonable amount and no more. (...)].

Despite the fact that the other projects were never implemented, they remained the first to insist on the creation of channels to divert the flow of streams from the Mandarache into to the Algameca Chica, as an absolute prerequisite for the establishment of a naval base in Cartagena. It is for this reason that the construction project that was eventually approved, in 1751, (Fig. 7) was able to avoid unnecessary expenditures on compensation, varying the route of the stream diversion channel and fortifying the city's northern side in such a way as to adapt to and respect the pre-existing urban environment.

### The political context of the expropriations for the Port of Cartagena

In October 1732, Spain was ruled by Felipe V. The nephew-grandson of Louis XIV of France, he had succeeded to the throne in 1700, thus launching the Bourbon Dynasty in Spain. At this time, with the royal treasury depleted by two centuries of imperial policy and expenses from the War of Succession [1702-1713], Felipe V's advisors had planned for the adoption of a French-style centralized administrative system, with the objective of increasing the effectiveness of taxes and solving many of the problems caused by the scarcity of funds (Bonell 2010). To do so, Felipe V relied on a distinguished group of senior officials from the bureaucratic elite of the Central Administration. One of the group's greatest exponents was José Patiño [1670-1736], the recipient of several of the letters used in this paper to illustrate the expropriation process for the expansion of the Port of Cartagena.

Appointed Secretary of the Navy and the Indies in 1726, later Treasurer and General Superintendent of Revenue [taxes] and War, and then Secretary of State in 1733, Patiño had been the Intendant of Cataluña since 1713, "applying

the *Nueva Planta* (New Plan), introducing the property registry and making a show of this willingness to compromise between the demands of the State and the interests of the subjects, which was a dominant feature throughout his career in the Administration" (Lynch 2007, 182-183). This commitment characterizes the institution of expropriation inherited from Medieval *Partidas*, combining the general interest and public utility with the right to private property.

Patiño's idea centered on the recuperation of Spain's power in Europe through a revival of commerce with the Americas by means of a strong navy, the development of a national industry and a fiscal policy focused on stimulating exports. According to Lynch, a positive policy of this kind – naval power, military action, defense of the Indies – cost money and the secret of Patiño's success was his ability to overcome financial difficulties and huge budget deficits (ibid., 183-184). This State policy, which aimed to overcome the naval vulnerability that was highlighted by the War of Succession, held the inspiration for actions such as the project to establish a Naval Base in the Bay of Cartagena. This would take place during a time of important population growth in Spain, part of which would occur in the periphery areas closely linked to the development of naval activity, causing cities such as "Ferrol and Cartagena to mushroom thanks to the activity of their shipbuilders" (Dominguez 2007, 345).

The management of royal finances and control of payments in the outskirts was carried out through a system that, "following the French example of recent decades, aimed to put an end to the existing laxity in military payments (...)" to which purpose, "payment makers" were named in each of the armies, including the Navy, who "received the money sent by the Lord Treasurer, produced monthly accounts and paid the officers and soldiers after conducting the relevant inventories and reviews" (Concepción 2004). This author adds that to do so, the said "inventories" were the responsibility of the "Sample Commissioners" and "inspectors" that had been appointed by the War Secretary and reported to the Central government operations control for the most efficient provisioning possible of the Royal Treasury's resources.



### **The valuation criteria used for expropriations in Cartagena**

The necessary expropriations for the construction of the harbor at Cartagena were managed from within this context, in which “inspectors” monitored the evaluations or “valuations” of the properties to be demolished [(...) I will begin to make appraisals with the unit inspectors, and expect to give an account of their amounts (...)], monitoring the economic control of the royal finances: [they will continue their appraisals, justifying what must be paid for it so that the sum is not a considerable amount (...)]. The research is based on the study of different historic bundles from 1732, located in the General Archive of Simancas [Valladolid, Spain], by which the military engineer, Sebastián Feringán Cortés, was reporting to the court on the work situation. The available documentation does not provide details concerning the valuation criteria for the land. In contrast, however, it does give a detailed description of the procedures for appraising buildings: [(...) adjusting for what the plot is worth and instructing its owner to take the materials from his demolished house, and subtracting this amount from the value of the house (...)].

Thus, a precise methodology was established that consisted of deducting the cost of building materials, which were delivered to the owner for use in building a comparable structure, from the value of the building: “[...] of the remaining houses included in the documents comprising the Antonio Monroy Project, for which the valuations will proceed (...) and justification of what must be paid for them (...) so that their cost will not be great, it would be fitting to adjust the plot and house for what they are worth and, by directing the owner of the plot to take the materials from his demolished house, it will only be necessary to indemnify a small amount from the Royal Treasury for use in the building of another house in the designated place].” Thus, the buildings were valued by: “[...] those which comprise the alignments of the channel and I am still perusing those houses included in those of the fortification (...)].” In a letter addressed to the aforementioned State Minister, José Patiño, the royal representative specifies the materials that can be reused in a new building, not so much from an interest in sustainability – ahead

of its time –, but rather as an effort to cut costs for the royal treasury: “[...] it seems to me that if H.M. determines there will be demolition, it will be very commensurate to provide the interested party with only the value of the masonry work and the plot along with the obligation to demolish his house and take with him the roof and wood for which it is valued and the stone from it, and this will be discounted in accordance with the number of cart-loads of the same, and the brick according to the value per thousand (...)].” The value [or “appraisal”] of recoverable materials is then assessed in detail in “reales de vellón” [currency]: “[I appreciate the masonry, carpentry, locksmith and blacksmith work that goes into the homes in the San Roque district (...) which are included in the alignments of the (...) canal that must carry water from the avenues out of this Port as indicated by the Project approved by H.M. (...): Masonry, 2651, Carpentry, 298; Locksmith, 25, Total, 2974].”

In addition to the value of the land and building and after subtracting the price of rescued materials, property owners were repaid the demolition costs (paid from their account) and transportation costs for moving the reusable materials to the rebuilding site: “[...] it seems appropriate that H.M. pay for the houses so that interested parties will demolish them and take the wood, iron stone and bricks, and will be indemnified for the plot of land, labor costs, demolition costs and transportation of the materials to another site for rebuilding].”

Finally, in addition to appraising the buildings set for demolition, further compensation was given for any trees that were cut down for being incompatible with the construction work: “[...] the different trees in the garden had not yet been appraised as the orchard inspector had not gone to see them (...)].”

The building of the new port in Cartagena took place in 1732, during a time when there were still no specific laws governing expropriations in this country. However, while in other culturally similar countries, such as France, the act of expropriation was tantamount to seizure until the 17th century, due to the absence of guarantees, Spain had a long tradition of upholding the right to receive indemnification when, for reasons of



public interest, it was necessary to deprive an individual of his right to own property. Therefore, part of the design and definition of the project at hand consisted of formulating different reports with regards to the expropriation costs of the houses affected by the diversion of the watercourses that flowed into the Mandarache to the Algameca Chica cove. The building project that was eventually approved in 1751, managed

to avoid those expenses derived from unnecessary compensations by varying the layout of the streams' diversion channel and the fortification of the northern side of the city, thereby adapting to and respecting the pre-existing urban environment. While the available documentation does not provide detailed criteria for the valuation of the land, it does, however, specify the procedure used for the appraisal of buildings.

## NOTES

1. A.G.S., Marina, leg. 379. Anonymous report directed to the Marquis de la Ensenada with reflections on the projects of Engineer Directors Alejandro de Rez and Antonio

de Montañú, defining parallels to that which was finally presented by the engineer Esteban Panon. Anonymous, 01/09/1739.

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